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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996	)	CC Docket No 98-78

COMMENTS OF NEXTLINK COMMUNICATIONS, INC.

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Summary

NEXTLINK Communications, Inc. ("NEXTLINK") hereby supports the above-captioned petition filed by the Association for Local Telecommunications Services ("ALTS") for a declaratory ruling under Section 706 of the Telecommunications Act of 1996 ("1996 Act"). Contrary to statements made in petitions recently filed by several Bell Operating Companies ("BOCs"), there has never been a time in the telecommunications industry when so many carriers are devoting so much resources to bring innovative and advanced services to the American public. Competition, and even the mere threat of competition, is driving all carriers, including incumbent local exchange carriers ("ILECs"), to accelerate their efforts not only to innovate, but also to deliver those innovations to customers. Far from discouraging innovation and investment, the onset of local competition has finally given the ILECs the *business* motivation to invest in and deploy new services to the public.

To ensure that advanced telecommunications services will be provided to Americans on a "reasonable and timely basis," the Commission should act to strengthen the rules for local competition such that all customers will have a choice of providers for *advanced as well as basic* telecommunications service. The Commission should affirm that Sections 251, 252 and 271 of the Communications Act apply to the provision of advanced telecommunications services in equal measure to their application to basic plain old telephone services ("POTS").

The Commission should clarify that for essential network elements, such as the unbundled loop, ILECs have a continuing obligation to provide nondiscriminatory access to such facilities for the provision of *any* telecommunications service. The Commission should also direct ILECs to provide interconnection for the exchange of all telecommunications across local networks, and to clarify that ILECs' obligations to provide access to OSS that supports the use of

network elements are just as important, if not greater than, their obligations to provide OSS access for resale.

In addition, the Commission should examine its collocation rules to address the continuing efforts by ILECs to frustrate local exchange competition through the use of unreasonable rates, terms and conditions for collocation. Because the Commission's collocation rules were developed more than 4 years before the passage of the 1996 Act and well before the development of the kind of advanced services at issue here, the Commission should reopen its proceeding to receive additional comment from CLECs that are using collocation under existing collocation rules.

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NEXTLINK Communications, Inc. ("NEXTLINK") hereby supports the above-captioned petition filed by the Association for Local Telecommunications Services ("ALTS") for a declaratory ruling under Section 706 of the Telecommunications Act of 1996 ("1996 Act").[1] Contrary to statements made in petitions recently filed by several Bell Operating Companies ("BOCs"),[2] there has never been a time in the telecommunications industry when so many carriers are devoting so many resources to bring innovative and advanced services to the American public. Competition, and even the mere threat of competition, is driving all carriers, including incumbent local exchange carriers ("ILECs"), to accelerate their efforts not only to

[1] Pub. L. 104-104, Title VII, § 706 ("Section 706").

[2] *See* Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No 98-11 (Jan 26, 1998); Petition of U S WEST for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26 (Feb. 25, 1998); Petition of Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-32 (Mar. 5, 1998); Petition of SBC for Relief from Any Unbundling or Wholesale Discount Obligations Applicable to Asymmetrical Digital Subscriber Line Facilities and Services, CC Docket No. 98-91 (Jun. 11, 1998).

innovate, but actually to deliver those innovations to customers. To ensure that advanced telecommunications services will be provided to Americans on a "reasonable and timely basis," the Commission should act to strengthen the rules for local competition such that all customers will have a choice of providers for *advanced as well as basic* telecommunications service.

I. INTRODUCTION

NEXTLINK is one of the largest facilities-based, competitive local exchange carriers ("CLECs") in the country. Currently, NEXTLINK operates sixteen high-capacity, fiber-optic networks to provide switched local and long-distance services in over twenty-eight markets in eight states.[3] As a leading provider of competitive telecommunications services, NEXTLINK will be significantly affected by the Commission's efforts to promote the provision of advanced telecommunications services under Section 706.

As ALTS states in its petition, Section 706 requires the Commission and state commissions to encourage the deployment of advanced telecommunications capability to the public. Section 706 provides that the Commission and its state counterparts should do so through the use of such methods as "price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."[4] As an initial matter, however, the Commission must determine whether consumers are gaining access to advanced services "on a reasonable and timely basis."[5] Even a cursory look at recent activity in the telecommunications industry

[3] NEXTLINK provides local exchange service through its affiliate companies: NEXTLINK Tennessee, L.L.C., NEXTLINK Illinois, Inc., NEXTLINK Ohio, L.L.C., NEXTLINK California, L.L.C., NEXTLINK Washington, L.L.C., NEXTLINK Utah, L.L.C., NEXTLINK Pennsylvania, L.L.P., and NEXTLINK Nevada, L.L.C.

[4] Section 706(a).

[5] *Id.*

suggests that this is indeed the case, as both CLECs and ILECs invest record sums in the deployment of new facilities and technology.[6]

CLECs need no additional motivation to rapidly deploy facilities and bring new and innovative services to the public. CLECs, by definition, enter new markets where the ILEC, on average, serves between ninety to a hundred percent of the market. As such, CLECs must provide service that is superior to existing ILEC service in order to win customers. CLECs' market entry strategies have focused to a large extent on meeting consumer demand that the ILECs, to date, have chosen to ignore. CLECs' ability to beat ILECs to market with advanced services, such as ADSL and other xDSL services, has provided those CLECs with a huge opportunity to win customers dissatisfied with the historically slow pace of ILEC innovation.

It is equally clear that ILECs have already accelerated their deployment of advanced services, particularly xDSL services, in response to the threat of competition.[7] As described in the ALTS petition, carriers such as U S WEST, Bell Atlantic, BellSouth, and GTE have actually deployed or announced the imminent rollout of xDSL services in cities across the country.[8] Bell Atlantic recently announced that it would make ADSL available to approximately 2 million lines by the end of 1998 starting in Washington, Pittsburgh and Philadelphia.[9] SBC has also stated that it plans to offer its ADSL services in over 200 communities in California by the end of the

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[6] *See* ALTS Petition at 6-9. *See also* Multichannel News (June 8, 1998), p. 3A.

[7] In another proceeding, the Commission recently noted the history of the telecommunications industry's generally poor performance in delivering innovative services to the public. *See* 1998 Biennial Regulatory Review Testing New Technology, CC Docket No. 98-94, FCC 98-118 (rel. June 11, 1998).

[8] *See* ALTS Petition at 8.

[9] *See* Multichannel News (June 15, 1998), p57. In 1999, Bell Atlantic plans to launch ADSL in New York and Boston.

summer of 1998.[10] All of these ILEC deployment plans were made in direct response to the threat of competition, and were approved under existing local competition rules devised by Congress and the Commission. Far from discouraging innovation and investment, the onset of local competition, even in its halting first steps, has finally given the ILECs the *business* motivation to invest in and deploy new services to the public.

In light of these positive developments since the passage of the 1996 Act and the adoption of the Commission's *Local Competition Order*,[11] the Commission should deny the several "Section 706" petitions filed by the BOCs. These petitions have nothing to do with fostering innovation, but rather are part of the BOCs continuing assault on the bedrock local competition provisions of Sections 251, 252 and 271. First, the evidence clearly demonstrates that in response to growing competition ILECs have already decided to deploy new facilities and services to the public. The Commission should not eliminate the important statutory and regulatory safeguards for local competition that have provided the impetus for ILEC innovation. Second, the BOCs' claim that they must be freed from regulation before the public can receive the benefit of advanced services is founded on the notion that the BOCs are the only game in town. It ignores the fact that CLECs are already providing advanced services. The Commission should reject the BOCs' myopic view that Section 706 was intended to encourage the deployment of advanced services by only the BOCs. Rather, Section 706 must be read in light of the purposes of the 1996 Act, which are to promote a "pro-competitive, deregulatory national policy framework" for competition in local telecommunications markets.[12] Therefore, any action

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[10] "Telephony," Communications Daily, May 28, 1998, at p. 6.

[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

[12] Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 11 (1996) at 1.

the Commission takes under Section 706 should be taken in a competitively neutral fashion to encourage the deployment of advanced telecommunications services by all carriers. Finally, the Commission must be clear that the statutory and regulatory provisions governing the rules of the road for local competition are absolutely necessary to promote competition that *benefits* the public. Congress and the Commission designed these rules of the road to create conditions for local competition where carriers would compete on the basis of service quality, innovation, and price and not through discrimination and other anticompetitive behavior.

NEXTLINK therefore urges the Commission to take immediate steps to ensure that CLECs continue to play a vital role in the development and provision of advanced telecommunications services. The Commission should affirm that Sections 251, 252 and 271 of the Communications Act apply to the provision of advanced telecommunications services in equal measure to their application to basic plain old telephone services ("POTS"). In particular, the Commission should clarify that for essential network elements, such as the unbundled loop, ILECs have a continuing obligation to provide nondiscriminatory access to such facilities for the provision of *any* telecommunications service. The Commission should also direct ILECs to provide interconnection for the exchange of all telecommunications across local networks, and to clarify that ILECs' obligations to provide access to OSS that supports the use of network elements are just as important, if not greater than, their obligations to provide OSS access for resale.

In addition, the Commission should examine its collocation rules to address the continuing efforts by ILECs to frustrate the growth of local exchange competition through the use of unreasonable rates, terms and conditions for collocation. The Commission's collocation

rules were developed in its *Expanded Interconnection* proceeding,[13] and adopted in an order that was released more than four years before the passage of the 1996 Act and well before the development of the kind of advanced services at issue here. In *Expanded Interconnection*, the Commission was focused on the development of the competitive access market, which is an important but much smaller effort than the current development of local exchange competition. Absent from the record in that proceeding was information addressing how competitive carriers might deploy advanced services, and no rules were developed to facilitate such development.

The Commission should reopen its proceeding to receive additional comment from those CLECs that have struggled to enter local markets under the Commission's existing collocation rules. An updated record that is focused not just on the needs of competitive access providers, but rather on full-fledged CLECs and the provision of advanced services, will provide the Commission with an opportunity to modify its rules to address the ongoing needs of the competitive local exchange market.

II. THE SUCCESS OF SECTION 706 REQUIRES THE FULL IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS OF THE 1996 ACT

As discussed above, competition, and the accompanying threat of lost customers and lost opportunities is the driving force for both CLECs and ILECs to deliver new services to the public. The issues that are most critical to the continued deployment of advanced services to the public are those that directly impact the viability of local competition. The ALTS petition presents the Commission with an opportunity to investigate and resolve those issues that

[13] *See Expanded Interconnection with Local Telephone Facilities*, 7 FCC Rcd 7369 (1992), 8 FCC Rcd 7374 (1993); 9 FCC Rcd 5154 (1994) ("*Expanded Interconnection*").

continue to delay the development of local competition and the deployment of advanced services to *all* Americans.

A. SECTIONS 251 AND 252

Sections 251 and 252 create the basic framework for competition in the local telecommunications market. Congress adopted Sections 251 and 252, including the additional obligations they impose upon ILECs, to create ground rules ensuring that service to the consumer—not the ability to discriminate against competitors—is the basis for competition. Congress was well aware, as was the Commission, that the ILECs' monopoly control over local exchange markets could quickly doom local competition. The nondiscrimination provisions of Sections 251 and 252 were the tools that Congress employed to provide all competitors in the local exchange market with an opportunity to compete on the basis of price, service quality, and innovation. These ground rules for competition are no less necessary for the provision of advanced telecommunications services than for the provision of POTS services.

Circumstances in the local exchange market have not changed since the passage of the 1996 Act such that Sections 251 and 252 should be abandoned or modified. ILECs still possess an extraordinary advantage in terms of their share of any local exchange market. Clearly the ILECs' continued control of almost a hundred percent of the nation's local exchange networks is overwhelming evidence of the ILECs' ability to potentially use that dominant position to the detriment of their competitors.

The Commission should affirm that Sections 251 and 252 apply to all services, including advanced telecommunications services, to ensure that ILECs continue to face real competition in the local exchange market. Any effort, at this stage, to exempt certain services from the requirements of Sections 251 and 252 would be misguided. First, the current "basic" services,

and "advanced" services dichotomy is inherently arbitrary because of the constant rate of change and innovation in the telecommunications industry and is unsustainable as a practical matter as the distinctions between such services continue to blur.[14] For the Commission to adopt such an approach to the evolution of local telecommunications services would serve not only to artificially divide the local exchange market into separate markets, but would eventually undermine the market for so-called "non-advanced" services provided today.

Second, because it is not currently feasible for CLECs to duplicate critical network elements such as the unbundled loop, granting the ILECs' 706 Petitions would deprive the vast majority of consumers of a competitive alternative for the provision of data services. Only the ubiquitous reach of the ILECs' networks, developed over the past century, provides the connection to millions of American consumers who will not be served by duplicate "loop" facilities in the near term. New entrants will *always* need access to those network elements that are a "bottleneck" facility. Granting ILECs exclusive control over those facilities providing non-basic services would not only create an unnecessary barrier for consumers seeking competitive alternatives for advanced services, but would also be inconsistent with the pro-competitive goals of the 1996 Act. If NEXTLINK and other CLECs are to move forward with their deployment of network facilities and the provision of advanced services, they must have continued access to ILEC network elements to provide those services to the American public.

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[14] If the Commission has learned anything from its efforts to categorize services in its *Computer Inquiry* proposals, it is that the steady progress of technological innovation can render illogical even the most carefully constructed regulatory categories. *See e.g.*, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, 13 FCC Rcd 6040 (1998).

1. NETWORK ELEMENTS

Since the passage of the 1996 Act, CLECs such as NEXTLINK have gained valuable practical experience from competing in the local exchange market. Many of the obstacles that CLECs have faced in trying to compete effectively for all of the ILECs' customers have been identified only since the Commission's implementation of local competition provisions of the 1996 Act. Other problems, however, result from nothing more than ILECs' continued resistance to provide CLECs with nondiscriminatory access to network elements as required by the 1996 Act and the Commission's rules.

As a facilities-based carrier, NEXTLINK provides service to many of its customers entirely through its own facilities. NEXTLINK uses unbundled loops from the ILEC to provide service to those NEXTLINK customers not directly connected to NEXTLINK's network facilities. Over the last two years, NEXTLINK has developed considerable experience with the use of unbundled loops as provided by several ILECs. Unfortunately, it is clear from NEXTLINK's experience that, even at this late date, ILECs are not fully committed to providing CLECs with nondiscriminatory access to unbundled loops. ILECs simply have not agreed to, nor have they developed the processes necessary to ensure that unbundled loops are provided to CLECs on a timely basis, with minimal disruption to the customer, and at a level of service quality equal to that which the ILEC provides to its end users.

These problems are compounded exponentially as the industry moves to digital networks and advanced services that require higher bandwidth. First, as ILECs continue to deploy more digital technology in their networks, the problems associated with providing CLECs access to "loops" which include such digital technology will increase. Second, as carriers increasingly deploy higher bandwidth services to meet customers' growing needs to exchange data, video and

other advanced services, the ability of CLECs to get access to loops capable of supporting such services becomes even more critical. It is imperative that the Commission confirm ILECs' obligation to provide CLECs with nondiscriminatory access to loops in order to ensure that consumers will have competitive alternative providers for these advanced services.

The Commission's definition of the "loop" element has created difficulties for CLECs attempting to access unbundled loops where the ILEC has deployed digital technology in at least part of the loop. Under the Commission's existing definition, CLECs are essentially limited to accessing the loop only at the central office.[15] Every other point of access is classified as "sub-loop" unbundling.[16] The failure of the ILECs to cooperate, and most state commissions to investigate "sub-loop" unbundling has left the ILECs in a position to block access to the loop at any point other than at the Main Distribution Frame ("MDF") in the Central Office. The Commission's rules for unbundled loops provide the CLEC with the potential to gain nondiscriminatory access to the loop, if the loop is deployed entirely with copper, and the customer does not wish to subscribe to any advanced services. However, if the ILEC has deployed any number of digital technologies in the loop, or the CLEC wants to provide a service requiring greater bandwidth than POTS service, the Commission's rules enable the ILEC to prevent CLECs from gaining nondiscriminatory access to those types of loops.

For example, many carriers have deployed Integrated Digital Loop Carrier ("IDLC") systems. If IDLC is deployed, several individual loops will terminate at a point between the end user location and the serving central office. This in-between point houses a connection point commonly referred to as a feeder distribution interface ("FDI"). The traffic from individual loops is transferred to the IDLC facility for transport from the FDI to the central office. Under

[15] *Local Competition Order*, 11 FCC Rcd at 15691, para. 380.

the Commission's rules, CLECs may access the loop only in the central office. This rule has in essence denied CLEC access to IDLC facilities present in the loop, because many forms of IDLC equipment afford no access to that loop in the central office.[17] In the *Local Competition Order*, the Commission acknowledged the difficulties presented by IDLC technology but affirmed the right of CLECs to obtain *nondiscriminatory* access to the loop, even where the ILEC deploys IDLC systems.[18] CLECs and ILECs, however, had minimal experience with access to unbundled loops at that time.[19] Therefore, even though the Commission affirmed the right of CLECs to gain nondiscriminatory access to loops no matter what facilities the ILEC choose to deploy in those loops, the Commission did not have an adequate record at that time to develop more precise rules regarding how ILECs must provide CLECs with access to loops in an IDLC system.

NEXTLINK has encountered tremendous difficulty in obtaining nondiscriminatory access to loops that utilize IDLC.[20] ILECs have generally offered NEXTLINK the use of a spare copper loop when NEXTLINK seeks to serve an existing ILEC customer on an IDLC system. This option is inevitably discriminatory. First, the ILEC is not offering NEXTLINK access to

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[16] *Id.*, at 15695-96, paras. 390-91.

[17] Even though some types of IDLC support access to the loop in the central office, ILECs have resisted CLECs efforts to use that access. *See* Petition of NEXTLINK Pennsylvania, L.L.P. for Arbitration of an Interconnection Agreement with Bell Atlantic-PA, Inc., Pursuant to the Telecommunications Act of 1996, Initial Hearing Transcript, A-310260F0002 (April 23, 1998) ("*NEXTLINK-PA Arbitration Hearing Transcript*") at 303-304.

[18] *Local Competition Order*, 11 FCC Rcd at 15692-93, paras. 383-84.

[19] *See id.*, 11 FCC Rcd at 15684, para. 368.

[20] *See NEXTLINK-PA Arbitration Hearing Transcript* at 299. ("The bottom line is that we're looking for circuits that are equal in quality. Equal in quality to what the customer use to experience when they were on Bell. Our feeling is that moving over to abandoned metallic plant represents a step backward. And that moving [from IDLC] to universal digital loop carrier is fraught with problems at the time of the cutover.")

the same loop used to provide service to that customer. The use of an existing spare copper loop may meet minimal specifications to provide POTS service, but in many circumstances it cannot be used by the CLEC to provide the customer with service at parity with what the ILEC was able to provide over the IDLC-deployed loop.[21] This is particularly evident where the customer is located at a significant distance from the nearest central office.[22] The gap in service quality between a spare copper loop and an IDLC-deployed loop is even more dramatic when the CLEC attempts to utilize the loop to provide a higher bandwidth service such as an xDSL service. Most advanced services require a shorter loop distance than is used for traditional voice service in order to maintain an adequate level of transmission quality. The spare copper loop then in essence is not only discriminatory, but is an unworkable option to provide these services to the consumer. Clearly this is not the result Congress or the Commission had in mind – that ILECs' deployment of new digital technology would hold consumers hostage to the ILEC.

As carriers deploy IDLC, and Universal Digital Loop Carrier ("UDLC"), and as they begin to deploy Next Generation Digital Loop Carrier technologies in their networks, the Commission must reaffirm the right of CLECs to gain *nondiscriminatory* access to the loop for the provision of *all* services, not just lower bandwidth voice services. It would be a highly absurd result if the Commission creates a market structure that permits customers to choose from competitive providers for voice service, yet essentially limits their options on choosing competitive providers for higher bandwidth services.

NEXTLINK also expects difficulties in providing advanced services regardless of loop facilities. For example, in order to provide a particular service, NEXTLINK needs advanced notice as to whether the ILEC's unbundled loop can support it. ILECs should be required to

[21] See *NEXTLINK-PA Arbitration Hearing Transcript* at 301.

provide CLECs with such information as part of the terms and conditions of providing unbundled loops.[23] CLECs also need the ability to gain access to the loop at points closer to the customer location in order to accommodate the distance limitations for certain advanced services. Bell Atlantic, for example, has deployed its ADSL equipment at premises outside of the central office so that it can provide ADSL service over a larger number of its loops.[24] CLECs must have the same opportunities to place equipment in such locations in order to receive nondiscriminatory access to loops for the provision of advanced services. Finally, as discussed below, the Commission must review its collocation rules to provide opportunities for CLECs to place their equipment in the necessary premises in order to provide these advanced services.

2. INTERCONNECTION

NEXTLINK has had significant experience negotiating interconnection arrangements with several ILECs. Through these arrangements, NEXTLINK has learned a tremendous amount concerning what is necessary to obtain nondiscriminatory interconnection that is "equal in quality" to the ILEC. During the two years since the passage of the 1996 Act, NEXTLINK has observed several ILEC attempts to provide less than equal treatment to CLECs for interconnection than the ILEC has provided to itself or any other type of telecommunications carrier needing to exchange traffic with the ILEC. To date, CLEC-to-ILEC network interconnection architecture, for the most part, has been inherently discriminatory compared to

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[22] *Id.*

[23] At a minimum, to the extent that ILECs have such information because of their own efforts to deploy advanced services, they should share that information with CLECs.

[24] Multichannel News (June 8, 1998) p10. Bell Atlantic's Director of Technology and Engineering stated that "[B]ecause copper lines extending from IDLC terminals tend to be shorter and in better condition than central office-based copper wires, ADSL service will be faster and more expansive in these newer areas [that have IDLC deployed]." *Id.*

the manner in which ILECs design their own networks. In addition, ILECs have been delinquent, at best, in the deployment of trunking facilities necessary to maintain an uninterrupted exchange of traffic with CLECs.

As NEXTLINK and other carriers deploy equipment in their networks to transmit data, the Commission must ensure that the ILEC's duty to interconnect extends to such new equipment that is deployed. This is even more critical as many carriers migrate all services, voice and data, onto packet-switched networks that carry data traffic. Nothing in the 1996 Act exempts equipment used to provide advanced services from the obligation to interconnect. The Commission should affirm that an ILEC must exchange any type of traffic that it is technically feasible to exchange. If the Commission were to sanction ILECs' refusal to exchange traffic, ILECs would have too great an opportunity to discriminate against CLECs.

3. OPERATIONS SUPPORT SYSTEMS

So far, ILECs have not implemented the systems and processes necessary to provide CLECs with nondiscriminatory access to OSS functions.[25] ILECs have delayed the provision of nondiscriminatory access as required by the Commission through the adoption of non-standard proprietary systems that require additional expense and delay before CLECs can make efficient use of those systems. To date, the ILECs have focused their attention on developing OSS support for the resale of their retail services at the expense of support for the use of network elements.[26] The success of competition depends to a much more significant extent on the ability

[25] *See* Ameritech, BellSouth Section 271 Applications.

[26] *See e.g.,* Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, R. 93-04-003, et. al., California Public Utility Commission, Reply of NEXTLINK California, L.L.C. and ICG Telecom Group, Inc. To Appendix A Responses of

of facilities-based CLECs such as NEXTLINK to gain access to network elements than on the ability of carriers to resell ILEC services. Resale presents little competitive threat to the ILECs, and many resellers simply provide the ILEC with an additional sales force for its services. Resellers, because they only sell the existing ILEC retail services, cannot compete through higher service quality and innovation like facilities-based CLECs. ILECs' failure to invest as much in the provision of OSS support for network elements as compared to resale is even more alarming, considering how poorly ILECs OSS access for resale has performed. The Commission should confirm that ILECs must provide access to OSS functions for network elements that is equivalent to the OSS functions the ILECs provide to themselves.[27]

B. SECTION 271

Section 271 prohibits a BOC from providing in-region interLATA services until that BOC has obtained authority from the Commission to do so in a specific state. The Commission interpreted the prohibition on interLATA services to include both telecommunications services and information services.[28] Therefore, regardless of whether advanced telecommunication capability is used for telecommunications services or information services, it is subject to Section 271.

Granting Section 271 relief (whether indirect or otherwise) to the BOCs for any form of advanced services (*e.g.* data services) would not only be directly contrary to the plain language of Section 271 (it prohibits *all* interLATA services), but it would also undermine the BOCs'

Pacific Bell.

[27] *Id.*.

[28] *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905, 21932 (1996).

incentive to comply with the market opening purposes of Section 271. As many commenters have indicated, data networks, and the provision of information as data (*i.e.*, packets), is rapidly overtaking the amount of traffic that is purely voice (*i.e.*, switched circuit). There are two trends that are contributing to the shift in network architectures from a circuit switched model to a packet switched model: the growth of data traffic, which is generally carried over packet switched networks, and the fact that innovations in packet switched network technology have improved the provision of basic voice services (as well as advanced services that include a voice component) over packet switched networks.[29] For the Commission to give the BOCs interLATA authority before they have complied with the market opening purposes of Section 271, would not only reward the BOCs for their blatant refusal to cooperate with the development of local competition, but as the above trends indicate, would soon completely eliminate the BOCs' need to ever comply with Section 271.

III. THE COMMISSION SHOULD REVIEW ITS COLLOCATION RULES

The Commission should confirm that the 1996 Act requires ILECs to provide collocation as a means to obtain interconnection and access to network elements to provide advanced services. Access to collocation is critical to ensuring that local competition is sustainable. In the *Local Competition Order*, the Commission affirmed that under Sections 251(c)(2) and 252(c)(3), a requesting carrier may choose any particular method of technically feasible interconnection or access to unbundled elements at a particular point. The Commission determined that unless an ILEC could establish that the specific technical or space limitations in Section 251(c)(6) are met

[29] Multichannel News (June 15, 1998) p57. Ameritech CEO, Richard Notebaert stated, "[I]f data traffic continues to grow at its present rate, the percentage will grow to something like ninety-nine percent of all network traffic minutes by the year 2010." *Id.*

with regard to physical collocation, an ILEC must provide for any technically feasible method of interconnection or access requested by a competing carrier, including physical collocation.[30]

The Commission's rules have left a great deal of room for ILECs to interpret them in a manner that frustrates the procompetitive intent expressed by the Commission in the *Local Competition Order*. NEXTLINK was one of the first CLECs to request collocation on a broad basis as part of its facilities-based entry strategy. During the past two years it has pursued collocation arrangements under the Commission's collocation rules, NEXTLINK has experienced numerous difficulties in obtaining collocation arrangements on reasonable rates, terms and conditions. The Commission should re-open its *Expanded Interconnection* proceeding and develop a record that reflects the experience of CLECs competing in the local exchange market – conditions that were not even contemplated when the Commission adopted its existing collocation rules. The Commission's rules were designed for different purposes, namely to promote competition in the access market. CLEC-to-ILEC interconnection is a relatively new arrangement, and many unique issues have evolved through the course of interconnection negotiations, state arbitration and other state proceedings (*e.g.*, Section 271 compliance hearings). Of even more direct import to this proceeding, those collocation rules did not address at all the advanced services at issue here or how CLECs were to obtain access to those services or to loops over which they could provision those services themselves.

In the *Local Competition Order*, the Commission stated that its existing collocation rules was largely consistent with the requirements of Section 251(c)(6).[31] Significant events have occurred, however, since the release of the Commission's order. Most significantly the Eighth Circuit struck down the Commission's effort to interpret and implement a workable set of rules

[30] *See Local Competition Order*, 11 FCC Rcd at 15770, para. 550.

for new entrants to gain access to network elements as intended by the 1996 Act.[32] The Eighth Circuit decided that the Commission had not correctly interpreted Section 251(c)(3) to the extent the Commission required ILECs to provide CLECs with combinations of elements.[33] Although some states had provided a competitive local market before the passage of the 1996 Act, it is only since then, in the last two years, that CLEC entry has created the experience necessary to identify significant issues and disputes that require the Commission to re-open and investigate the needs of competitive local providers to gain interconnection and access to network elements through collocation, both physical and virtual.

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[31] *Local Competition Order*, 11 FCC Rcd at 15787, para 565.

[32] *Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir. 1996), "Order on Petitions for Rehearing," 120 F.3d 753 (8th Cir. 1997), *cert. granted*, 118 S.Ct. 879 (1998).

[33] *Id.*, 120 F.3d at 813.

IV. CONCLUSION

The Commission should issue a declaratory ruling affirming the application of the local competition provisions of the 1996 Act, Sections 251. 252, and 271, to the provision of advanced services. The Commission should also reopen its collocation proceeding in order to revise its rules to reflect the concerns of a competitive local exchange market.

Respectfully submitted,

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